

IN THE HIGH COURT FOR THE STATE OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R.NO. 16 OF 2001
DATE OF DECISION:27.9.2006

JUGRAJ SINGH AND OTHERS

...PETITIONERS

VERSUS

NOTIFIED AREA COMMITTEE AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VINOD K.SHARMA.

Present: Mr. Chetan Mittal, Advocate
for the petitioner

Mr. Harsh Aggarwal, Advocate
for the respondents.

Vinod K.Sharma, J.(oral)

The petitioners had filed a suit in representative capacity against the defendants on the plea that the suit land is recorded as ownership of Mushtaraqa Thulla Malkan of Patti Bagha, Thulla Paloo Singh (Hasab Rasaq Kabza), which means according to the share of land owned and possession by each proprietors. The plaintiff-petitioners had claimed that they were proprietors of Patti Bagha, Thulla Paloo Singh and there were other co-owners of the suit land and the complete list of proprietors of Patti Bagha was annexed with the plaint. It was further claimed that the plaintiffs being son of the proprietors of Patti Bagha were owners in possession of the suit land

and that they were in peaceful and cultivating possession of the same for the last many years as co-owners. The defendants claimed that it was the owner of the suit property as the suit land was reserved for common purposes during the consolidation and even after consolidation. On the such basis a notice was issued under Section 48 of the Punjab Municipal Act (for short 'the Act') and Section 89 of the Code of Civil Procedure on the defendants. In the suit filed by the plaintiff-petitioners had claimed themselves to be sons of Chanan Singh and even while recorded their evidence, they had mentioned themselves to be sons of Chanan Singh. The learned trial Court dismissed the suit, keeping in view the fact that Chanan Singh was never recorded as proprietor in the list attached with the plaint and therefore, it was held that the petitioners being not proprietors had no locus standi to maintain the suit and accordingly, the suit was dismissed.

The petitioners filed an appeal against the judgment and decree and during the pendency of the said appeal an application was under Order 6 Rule 17 CPC for amendment of the plaint on the ground that the petitioners were in fact son of Sarup Singh son of Waryam Singh. It was also the case set up in the application that earlier mother of the petitioners was married to Chanan Singh, out of which wedlock Mit Singh and Bachittar Singh were born. Lateron she married Sarup Singh brother of Chanan Singh and from that wedlock the plaintiffs were born. The estate left by Chanan Singh was inherited by Mit

Singh and Bachittar Singh whereas the estate of Sarup Singh was inherited by Ajmet Singh and Nazar Singh. The petitioners had earlier placed a pedigree table as Ex P.23 on the suit filed alongwith jamabandi relating to the suit land. The learned appellate Court dismissed the application on the plea that if the amendment is allowed then the same will entirely change the nature of the suit. The court also took notice of the fact that Nazar Singh while appearing as PW-1 has stated that himself to be son of Chanan Singh. Learned lower appellate Court also took notice of the fact that in the previous suit Nazar Singh had described him to be son of Chanan Singh alias Sarup Singh son of Waryam Singh.

Mr. Chetan Mittal, learned counsel appearing for the petitioners contends that it was due to inadvertence that the name of Chanan Singh was mentioned as father of the petitioners only on account of the fact that their mother was earlier married to Chanan Singh. He placed reliance on Ex. P.23 i.e. pedigree table in which it was clearly mentioned that Ajmer Singh and Najar Singh were sons of Sarup Singh whereas Mit Singh and Bachittar Singh were shown to be sons of Chanan Singh. It is also not in dispute that respondent-Committee in their notices, issued to the petitioners i.e. Exs.D. 1, 4 and 5, had described the petitioners to be sons of Sarup Singh and not of Chanan Singh. The case of the respondent was that the petitioners were lessee under the Notified Area Committee. Thus, it would be seen that the learned lower trial Court was wrong in coming to the conclusion

that the entire nature of the suit would change in case the amendment is allowed. The claim of the petitioners was that they were proprietors of the Patti Bagha and further that the respondent-Notified Area Committee had no right or jurisdiction over the land in dispute. The amendment sought by the petitioners is, therefore, necessary for just and proper adjudication of the case as the petitioners by way of said amendment wanted to correct the wrong description of parentage and there is sufficient material on record in support thereof. Therefore, the provision of Order 6 Rule 17 CPC have to be applied to do justice between the parties and it was not open to the Court to reject the same on technical ground even though the case of the defendant-respondents themselves was that petitioners were sons of Sarup Singh. In view, what is stated above, this revision petition is allowed. Impugned order is set aside. The application moved under Order 6 Rule 17 CPC by the petitioners is allowed. The learned lower appellate Court is directed to proceed with the matter on merits in accordance with law after allowing the amendment. It is made clear that the respondents will be at liberty to take all possible defences in the suit filed by the plaintiffs.

September 27,2006
gsv

(Vinod K. Sharma)
Judge